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(1) *Price*
(2) Q: Can you tell me who Michael Roth was
(3) as of the date of this memorandum?
(4) A: I don't have a clue.
(5) Q: When Mr. McKinnon was employed by
(6) Liberty, did he have some sort of oversight
(7) responsibility with respect to the activity of
(8) the FCC lawyers?
(9) A: I'll try to answer that. He didn't
(10) oversee the FCC lawyers, but I believe he dealt
(11) with them.
(12) DIR Q. During the time that Mr. McKinnon
(13) was employed by Liberty, did you yourself have
(14) much occasion to deal with the company's FCC
(15) lawyers or was that primarily handled by
(16) Mr. McKinnon?
(17) MR. SPITZER: I'm going to instruct
(18) the witness not to answer the question
(19) because it's been asked and answered.
(20) We've reviewed this in a 12-hour
(21) deposition several weeks ago and this is
(22) far beyond the scope of the deposition,
(23) whose parameters were set by the judge in
(24) an order of July 29.
(25) MR. BECKNER: Okay. You've made

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(1) *Price*
(2) your record on that.
(3) DIR Q. Mr. Price, did your involvement with
(4) Liberty's FCC lawyers increase after
(5) Mr. McKinnon left the employ of Liberty Cable?
(6) MR. SPITZER: I'm going to give the
(7) witness the same instruction.
(8) MR. WEBER: If I could be heard on
(9) this, I will disagree insofar as that this
(10) question far exceeds the scope of the
(11) judge's order. Certainly because the
(12) February 24th Lehmkuhl memo was prepared
(13) by Liberty's FCC counsel asking Mr. Price
(14) about his involvement with FCC counsel I
(15) would believe is relevant.
(16) MR. SPITZER: But pegging it to -
(17) MR. BECKNER: As to whether it was
(18) asked and answered, I'm not going to
(19) comment.
(20) MR. SPITZER: The effect of
(21) Mr. McKinnon's departure or presence at
(22) Liberty and McKinnon's presence as it
(23) related to the scope of Mr. Price's
(24) involvement with counsel is something that
(25) is unrelated to the February 24

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(1) *Price*
(2) memorandum. And as a consequence it is
(3) not related to the issues raised and the
(4) judge permitted to be raised in today's
(5) deposition. If you wish to peg your
(6) questions to this memorandum in some way,
(7) that is fine. But simply a generic
(8) question about Mr. Price's relationship
(9) with FCC counsel is beyond the scope of
(10) this deposition. And if it was asked at
(11) length, those issues were pursued at
(12) length back in May.
(13) Q: Mr. Price, you'll note that Price
(14) Exhibit 20 is not addressed to you. That's the
(15) April 6 memorandum.
(16) A: Yes.
(17) Q: And you'll note that the previous
(18) memorandum, Price exhibits 17, 18 and 19, are
(19) addressed to you, among other people. Do you
(20) see that?
(21) A: Yes.
(22) Q: So my question is, do you know of
(23) any reason why of these four memoranda, one
(24) would be addressed to Mr. McKinnon and not to
(25) you and the other three would be addressed to

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(1) *Price*
(2) you?
(3) A: I have no idea. Perhaps - well, I
(4) have no idea. I don't want to speculate.
(5) Q: Okay. If you don't know, you don't
(6) know.
(7) A: I just don't know.
(8) Q: Assuming that you forwarded Price
(9) Exhibit 17 to Mr. Nourain, as I believe you
(10) testified would have been your customary
(11) practice if you in fact received it, what would
(12) you have expected Mr. Nourain to do with this
(13) exhibit?
(14) MR. SPITZER: If he had any such
(15) expectation.
(16) A: Well, my instructions were earlier
(17) that operations should coordinate license
(18) applications and coordinate with Washington
(19) counsel, and I presume that's what they were
(20) doing.
(21) Q: So would that coordination have
(22) included in your expectation a determination as
(23) to whether or not Liberty was providing service
(24) to any of the addressees listed in the exhibit
(25) as the subject of pending as opposed to granted

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[1] *Price*
[2] applications?
[3] A: I believe I had, there is a memo I
[4] sent on that subject which laid out the
[5] procedure that I expected. I think it was
[6] submitted.
[7] MR. SPITZER: It was produced in
[8] the course of Mr. Price's last
[9] deposition.
[10] A: Those were my expectations and I set
[11] down the process on paper. If you showed it to
[12] me, I could read it to you, but I don't have it
[13] handy.
[14] Q: That's why I brought these books.
[15] I'm going to show you a copy of
[16] what's been previously marked as Exhibit 2 to
[17] your deposition and just ask you if this is the
[18] document that you have in mind its the some
[19] other document that you have in mind.
[20] MR. BECKNER: Let me object to your
[21] pointing things out to the witness and
[22] saying "No."
[23] MR. SPITZER: The witness has
[24] already said it was the document that we
[25] produced in the course of his last

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[1] *Price*
[2] deposition.
[3] MR. BECKNER: I would like the
[4] witness to answer the questions, not his
[5] lawyer, and I'm entitled to get that. Is
[6] that clear?
[7] MR. SPITZER: Excuse me?
[8] MR. BECKNER: I'm entitled to get
[9] the witness' answer to the question.
[10] MR. SPITZER: In that case I will
[11] produce the documents you were looking
[12] for, which is the Price exhibit produced
[13] in the course of the last deposition. We
[14] can produce it here. That is not the
[15] document you had said you would produce.
[16] If you're trying to trick the witness I
[17] will intervene.
[18] MR. BECKNER: I'm not.
[19] MR. SPITZER: Produce the document
[20] that you say you were going to produce.
[21] Q: Is this not the document you were
[22] referring to, sir?
[23] A: That is not the document.
[24] Q: Fine.
[25] MR. BECKNER: I am trying to find

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[1] *Price*
[2] the document. This is one document that I
[3] found. And you're telling me it was
[4] produced in the second phase?
[5] MR. SPITZER: That is correct. We
[6] faxed it pursuant to request of counsel.
[7] MR. BEGLEITER: I don't know if it
[8] was marked as an exhibit.
[9] MR. BECKNER: I don't think it was.
[10] MR. BEGLEITER: If you'd like,
[11] Mr. Beckner, I can try to find it.
[12] MR. BECKNER: Why don't we go off
[13] the record and you can do that.
[14] (Discussion off the record.)
[15] Q: Mr. Price, you've been handed an
[16] exhibit that's been marked as Exhibit 3 to
[17] Mr. Stern's deposition, and what I'd like you to
[18] tell us is whether or not that is a copy of the
[19] memorandum that you were referring to a few
[20] minutes ago.
[21] A: Yes, it is.
[22] Q: There's a sentence in the memorandum
[23] that says, "Once Joe has audited our list of
[24] applications against the licenses received,"
[25] et cetera. I just draw your attention to that

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[1] *Price*
[2] sentence.
[3] Does that set forth the expectation
[4] that you testified to a few moments ago about
[5] what Mr. Nourain should have done with Price
[6] Exhibit 17, assuming that he got it?
[7] A: It's part of it. It has to be taken
[8] in the context of the whole paragraph. The
[9] sentence before it bears on it and the sentence
[10] before that bears on it too; it's all part of
[11] the same fabric.
[12] Q: So would it be correct to say that
[13] moving away from Stern Exhibit 3 and going back
[14] to Price Exhibit 17, that you would have
[15] expected someone in operations, Mr. Nourain or
[16] someone, to compare the applications and the
[17] status reported about those applications in
[18] Price Exhibit 17 against whatever operations had
[19] in the way of their activities?
[20] A: To coordinate operations with
[21] Washington counsel to make sure we were in - we
[22] had properly licensed all our patents yes.
[23] Q: And you would have expected the
[24] operations personnel to have done that with
[25] respect to these other reports that have been

Paths
Q

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(1) *Price*
(2) marked as Exhibits 18, 19 and 20 to your
(3) deposition as well, assuming that they received
(4) them?
(5) **A:** That's correct.
(6) **Q:** I want to show you again Price
(7) Exhibit 2, the document that I showed you a few
(8) moments ago and provoked some discussion between
(9) us, or between counsel. And you've testified
(10) about this document at some length before and
(11) I'm not going to ask you to repeat the things
(12) you said previously.
(13) What I simply want to know is
(14) whether or not in the course of this information
(15) gathering that you describe in this exhibit and
(16) that you were having people do, whether or not
(17) you would have expected Behrooz Nourain or Tony
(18) Ontiveros to have used Price Exhibit 17 in
(19) conjunction with the information-gathering
(20) process that you had started up and that's
(21) discussed in that memorandum.
(22) **A:** Since I don't recall having received
(23) it, I couldn't have asked them to use it as part
(24) of the response to the memo, because I didn't
(25) recall receiving it then and I don't recall

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(1) *Price*
(2) receiving it now.
(3) **Q:** I understand. I don't think maybe
(4) you understood my question. Let me just try
(5) again.
(6) Assuming that Mr. Nourain had
(7) received Price Exhibit 17, would you have
(8) expected him, without your necessarily telling
(9) him to do so, to use Price Exhibit 17 in
(10) conjunction with his responding to your
(11) memorandum that's been marked as Price Exhibit
(12) 2?
(13) **A:** I would have expected him to use
(14) everything at his disposal to respond to the
(15) request.
(16) **Q:** And to the extent that anyone at
(17) Pepper & Corazzini was involved in working with
(18) you in this information gathering process that's
(19) described in Price Exhibit 2, you would have
(20) expected them, if they had this document, to
(21) have also used Price Exhibit 17 as well; isn't
(22) that correct?
(23) **A:** I would have expected them to use
(24) everything at their disposal to comply with what
(25) I had asked our management to do.

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(1) *Price*
(2) **Q:** I understand that you've testified
(3) that you don't recall receiving Price Exhibit 17
(4) or the other similar Price exhibits. And just
(5) to be clear, had you received Price Exhibit 17,
(6) would you have taken the time to read any of it
(7) at all or would you have simply noted its
(8) subject and passed it on to Mr. Nourain?
(9) **A:** The latter.
(10) **MR. SPITZER:** Had the witness not
(11) answered so quickly, I would have
(12) objected.
(13) **DIR Q:** During the first four months of 1995
(14) and the previous year, calendar 1994, were there
(15) any kinds of communications from Pepper &
(16) Corazzini to Liberty, aside from those that
(17) instructed you to do something or to sign
(18) something that you would have taken a particular
(19) interest in?
(20) **MR. SPITZER:** I'm going to object to
(21) the question as beyond the scope of this
(22) deposition.
(23) **MR. BECKNER:** And you're telling him
(24) not to answer?
(25) **MR. SPITZER:** I'm instructing him

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(1) *Price*
(2) not to answer.
(3) **MR. BECKNER:** Could I have the
(4) question read back.
(5) (The record was read.)
(6) **MR. SPITZER:** The question also
(7) would invade the attorney-client
(8) privilege. It's remarkably broad. If you
(9) wish to narrow it, I obviously don't know
(10) where you wish to go, but if you wish to
(11) narrow it perhaps it would remedy both of
(12) the problems. But it's excessively broad,
(13) it would invade the attorney-client
(14) privilege and it's beyond the scope of the
(15) deposition.
(16) **MR. BECKNER:** Do you have anything
(17) you want to add?
(18) **MR. WEBER:** I would disagree
(19) certainly with your third point that it
(20) exceeds the point of the discovery. As to
(21) the first two points, I won't comment on
(22) it; it's your witness, not mine.
(23) **MR. SPITZER:** Perhaps you could
(24) reformulate it to remedy the problems.
(25) **Q:** If I can condense your answer to the

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Price

(1)
(2) last question, Mr. Price, I think what you
(3) testified about Exhibit 17 and these other
(4) similar exhibits is that if you received them,
(5) and I understand you're not saying that you
(6) remember receiving them or not, but if you
(7) received them, you would have looked at them,
(8) seen they were addressed also to Mr. Nourain,
(9) seen that they were about the details of license
(10) status and would have passed them on to
(11) Mr. Nourain without having read them yourself;
(12) am I fairly summarizing your testimony?

(13) A: I think that's a fair statement.

(14) Q: Let me ask the question this way,
(15) then. Was it the fact that the memorandum
(16) involved this inventory of licenses which led
(17) you to or which would have led you to have
(18) simply passed it on to Mr. Nourain without
(19) reading it yourself? Was that the reason that
(20) you don't think you would have read it even if
(21) you remember receiving it?

(22) A: A couple of reasons. One, it
(23) related to what I believed was a routine
(24) maintenance of licensing procedure by operations
(25) and counsel. And secondly, it didn't, there is

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Price

(1)
(2) nothing out of the ordinary there that I noticed
(3) that called for any action by me, nor flagged
(4) any issue that I was being asked to intervene
(5) for.
(6) Q: So would it be fair to say that if
(7) you had received it, and I'm not saying you did,
(8) but if you had received the memorandum from your
(9) counsel and it appeared to you to be out of the
(10) ordinary or that called for you to do something
(11) personally, then you would have read it?

(12) A: That's correct.

(13) Q: Would it also be fair to say that
(14) because these kinds of memoranda of licenses,
(15) the license inventory, if you will, were
(16) prepared apparently on a somewhat regular basis,
(17) that's one of the reasons that it appeared to
(18) you to be a routine document, if you'd seen it?

(19) MR. SPITZER: I don't think there's
(20) foundation from this witness for his
(21) belief that this was a document that was
(22) routinely prepared. His testimony with
(23) respect to each of these documents was
(24) that he did not recall seeing it,
(25) therefore the predicate that it was

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Price

(1)
(2) routinely prepared simply is not in the
(3) record. I'll object on that basis.

(4) MR. BECKNER: Could you read back
(5) the answer to the previous question,
(6) please.

(7) (The record was read.)

(8) Q: Let me re-ask the question. If
(9) memoranda like Price Exhibit 17, Price Exhibit
(10) 18, 19 or 20 were coming across your desk in a
(11) somewhat regular way, would that have been one
(12) of the reasons why Price Exhibit 17 would have
(13) appeared to you, had you seen it, as involving,
(14) and I can't recall your exact words, a routine
(15) inventory, I think it was, or routine
(16) maintenance of licensing?

(17) A: Yes.

(18) MR. SPITZER: As a prefatory matter,
(19) I think you're planning to use as exhibits
(20) the documents that are attorneys' eyes
(21) only.

(22) MR. BECKNER: Right.

(23) MR. SPITZER: If, and I know
(24) Mr. Weiss is not within eye view of these
(25) documents and so there's no problem, but

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Price

(1)
(2) if you plan to ask a question which
(3) reveals any information in these
(4) documents, perhaps we need to take some
(5) cautionary steps. Again, I don't know if
(6) that will be necessary.

(7) MR. BECKNER: I don't think that I'm
(8) going to ask anything about the documents
(9) that is sufficiently specific to reveal
(10) the information that was redacted.

(11) MR. SPITZER: Fine. Just flagging
(12) an issue.

(13) MR. BECKNER: And that he wouldn't
(14) otherwise be entitled to see as one of
(15) those small people - pardon me, small
(16) number of people who were allowed to see
(17) whatever it is, the highly confidential
(18) materials.

(19) MR. SPITZER: Fine.

(20) MR. BECKNER: Just to refresh your
(21) recollection about the list. He's on the
(22) list.

(23) MR. WEISS: It's been a while since
(24) anyone's called me small.

(25) MR. BECKNER: Completely

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(1) *Price*
(2) inadvertent, I assure you.
(3) Q: Mr. Price, I'm going to show you
(4) what's been marked as Exhibit 21. And it's
(5) titled "Installation Progress Report," and the
(6) first page has production number CP 017004, the
(7) last page has production number CP 017014.
(8) Let me know when you're ready to
(9) answer some questions about it, sir.
(10) A: I am.
(11) Q: Sir, as a preliminary matter, is
(12) this in fact a copy of one of the documents, a
(13) report that was prepared weekly by the
(14) operations department?
(15) A: It appears to be.
(16) Q: And this is something that was, this
(17) type of document was discussed at the - I think
(18) Thursday weekly meetings that you had with your
(19) senior staff; is that correct?
(20) A: That's correct.
(21) Q: Looking at Price Exhibit 21, does
(22) there appear to be anything missing from the
(23) document as far as you can tell?
(24) A: I really can't tell without
(25) comparing it to other documents. Looks to be

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(1) *Price*
(2) the format.
(3) Q: Yes. These documents follow a
(4) regular format; is that correct?
(5) A: Yes.
(6) Q: Do you have any reason to believe
(7) that this particular report, that is, the one
(8) that's been marked as Exhibit 21, was not
(9) discussed by you at the weekly staff meeting
(10) that was held on or after the date of the
(11) document?
(12) A: I have no reason not to believe it
(13) was. I don't know if it was.
(14) Q: I understand.
(15) And again, just to allow us to
(16) interpret the document, I'm not going to take
(17) you through it in great detail, but on the first
(18) page under the heading "Current Projects," those
(19) are projects which Liberty is or was in fact
(20) working on as of the date of this report; is
(21) that correct?
(22) A: Not - oh, current projects, yes.
(23) Those we were currently working on. The future
(24) installations is below that.
(25) Q: Right. And the status column at the

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(1) *Price*
(2) far right, the top four of these there's the
(3) word "complete." Would you understand that to
(4) mean that the installation had been complete in
(5) those four locations as of the date of the
(6) report? Is that what that means?
(7) A: It would mean that the phase they
(8) were working on was complete, not necessarily
(9) that the job was complete but that the phase was
(10) complete. Often they start a job, go to another
(11) job and come back again. But whatever was set
(12) out to be as the plan for that building was
(13) complete. It might be a two-phase job, a
(14) three-phase job, but the element they were
(15) working on was complete.
(16) Q: There's a couple of dates in these,
(17) there's a date, a start column with dates and an
(18) end column with dates. And I take it, then,
(19) that - well, let me just, what would the end
(20) date mean, that is, what would be ended by that
(21) date?
(22) MR. SPITZER: Again, Mr. Beckner,
(23) we're trying to give you as much latitude
(24) to conduct your deposition as you feel
(25) necessary, but this issue in particular

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(1) *Price*
(2) was one that was dealt with at length in
(3) the prior depositions, several prior
(4) depositions. And again, I'll let you ask
(5) a few questions on the presumption that
(6) it's a foundation for something else, but
(7) I want the record to be clear that we're
(8) not going to start the lengthy process of
(9) reviewing things we've already dealt with.
(10) Q: You want to have the question read
(11) back, sir?
(12) A: No. You're asking what the start
(13) date means and the end date means.
(14) Q: Yes, sir.
(15) A: I'm not intimate with the jargon of
(16) the operations staff, but in my mind, sitting in
(17) the meetings, the start date is the month that
(18) they started the installation and the end date
(19) is the date they finished that initial phase of
(20) the installation.
(21) Q: Now, if you just turn to the second
(22) page of the report, which at the top of the page
(23) it has the year 1995. Were those two addresses
(24) indicated on that page, does their being
(25) identified on this page mean that in fact

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(1) *Price*
(2) customers are being served at those addresses;
(3) is that what it means when an address is put on
(4) one of these pages with the year number like
(5) 1995?
(6) **A:** I don't know the answer to that
(7) question.
(8) **Q:** So you don't know whether or not
(9) those projects would have been still under
(10) construction of some sort or released to
(11) marketing and in fact -
(12) **A:** No, I just stand by what I said
(13) before what "complete" means. It would mean the
(14) same thing on page 2, I presume, as it means on
(15) page 1.
(16) **Q:** Is there any indication that that's
(17) on any page of this report whereby you can
(18) identify a building that is actually being
(19) served by Liberty Cable, in other words, where
(20) the customers in the building are receiving the
(21) programming that they bought and so on, as
(22) distinct from a building that's under
(23) construction or that is scheduled for
(24) construction sometime in the future?
(25) **MR. SPITZER:** I'm going to object

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(1) *Price*
(2) again because I think we're now into pure
(3) questions of interpretation about this
(4) document and we really had spent hours on
(5) in prior depositions with each of the
(6) witnesses who was deposed.
(7) **MR. BECKNER:** We can go at it from a
(8) different direction if you don't like
(9) this.
(10) **Q:** I'd like you to, if you would, sir,
(11) pick up Exhibit 17. That's the February 24th
(12) memo - and turn to the page - unfortunately on
(13) my copy the production numbers have been lost in
(14) the reproduction. But it has WNTM 212 at the
(15) top right corner. It says "Bristol Plaza" on
(16) the top.
(17) **MR. BEGLEITER:** Is that 016141?
(18) **MR. BECKNER:** The number on my copy
(19) has been chopped off and I can't read it.
(20) I'm sorry.
(21) **MR. WEBER:** 16154.
(22) **MR. BECKNER:** It's a full page.
(23) I'll just note for the record the
(24) production number of this page has been
(25) obliterated in the copy process and you

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(1) *Price*
(2) can't really tell.
(3) **MR. SPITZER:** But we're on the same
(4) page now.
(5) **MR. BECKNER:** Yes. I'll note for
(6) the record that this page has WNTM 212 at
(7) the top right and it consists of a series
(8) of columns that have addresses, "azimuth"
(9) and "status," and this particular page the
(10) first address is 30 Waterside, so I think
(11) that should identify it sufficiently.
(12) **Q:** What I want to direct your attention
(13) to, Mr. Price, is the address that's about a
(14) quarter of the way down the page, 433 East 56th
(15) Street. You see that, sir?
(16) **A:** Yes, I do.
(17) **Q:** And you see that the status
(18) indicated there is P?
(19) **A:** Yes, I do.
(20) **Q:** And if you refer back to the very
(21) first page of this exhibit, which is
(22) Mr. Lehmkuhl's cover memorandum, he explains
(23) that the license status of each path is
(24) indicated in the right margin of the general
(25) listing by either a P, which means pending, or a

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(1) *Price*
(2) G, which means granted. And therefore you would
(3) agree with me, would you not, that according to
(4) this memo, the application for 433 East 56th was
(5) pending as of the date of this memo?
(6) **A:** That's what this document says.
(7) Whether that's true, I don't know, but that's
(8) what this document says.
(9) **Q:** Now, if you would turn back to the
(10) second page of Exhibit 21, which is the
(11) installation progress report that we've been
(12) looking at. And there's an address there of 433
(13) East 56th Street. It's the very first one. Do
(14) you see that?
(15) **A:** Yes, I do.
(16) **Q:** And you see the status column, it
(17) says "complete." Now, what I want to ask you is
(18) whether or not, based on your understanding of
(19) the meaning of the various entries in these
(20) installation progress reports, whether or not
(21) you or anyone else who might have had occasion
(22) to read the Lehmkuhl memorandum which indicated
(23) that the application for 433 East 56th was
(24) pending would have then known, looking at the
(25) progress report, whether or not service was

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Price

- [1]
[2] being provided to that address as of the date of
[3] the report.
[4] A: I can't speak for anyone else what
[5] they might have known. And since I didn't read
[6] it, I can't speculate as to what I would have
[7] known had I read it.
[8] Q: Well, the question is what these two
[9] documents tell you now that you're looking at
[10] them now.
[11] A: I guess what you're inferring is did
[12] we know we were operating, you know, in some
[13] inappropriate way, and I've testified before
[14] that I didn't know we were operating in any
[15] inappropriate way, and if I had, I would have
[16] done something about it.
[17] Q: I apologize if my question appears
[18] to you to be unclear, and that wasn't my
[19] question. You've answered that question before,
[20] as you said.
[21] My question is simply this, the
[22] Lehmkuhl memorandum, which is Exhibit 17, says
[23] that the application for 433 East 56th is
[24] pending. I'm not saying whether it's true or
[25] not; that's what it says. And this memorandum

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- [1]
[2] is dated February 24th. The installation
[3] progress report for February 23rd says that the
[4] status of 433 East 56th Street is complete. And
[5] it's listed in a column not under "Current
[6] Projects" or "future Installation," but under
[7] the year 1995.
[8] Now, my question to you is simply
[9] that, assuming the truth of these two documents
[10] that are here before you, and I understand that
[11] you said you haven't seen the Lehmkuhl paper
[12] before, you don't remember having seen it
[13] before, would these two documents tell you, had
[14] you looked at them at the time they were
[15] prepared, that Liberty was providing service to
[16] 433 East 56th Street even though its application
[17] for such service was in fact pending as opposed
[18] to granted.
[19] MR. SPITZER: I'll object for two
[20] reasons. One, you're asking the witness
[21] to speculate about what he would have
[22] concluded from a document which he's
[23] testified he has no recollection of
[24] reading or reviewing. Secondly, he has
[25] testified that he does not know what the

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- [1]
[2] word "complete" means in Price Exhibit
[3] 21.
[4] Therefore, you're asking him to
[5] again reach, to speculate about what he
[6] might have concluded had he read a
[7] document and given meaning to a word he's
[8] already said he doesn't know how to
[9] interpret.
[10] MR. BECKNER: I'm not asking him to
[11] speculate. I'm asking him to tell us what
[12] these two documents tell him as he sits
[13] here today.
[14] Now, if he tells me that he can't
[15] answer the question because he doesn't
[16] know what various terms in the
[17] installation progress report means, then
[18] that's fine, that's his answer.
[19] A: Let me tell you frankly the problem
[20] I'm having with the hypothetical. The
[21] hypothetical is that if someone who had received
[22] and read both documents had picked them up and
[23] read them and compared one line to the other,
[24] could they have concluded there is some
[25] contradiction or problem with those two lines.

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- [1]
[2] The reason I'm having a problem
[3] answering is that if someone had a file of these
[4] installation progress reports over the years
[5] they were kept, which is a lot of paper, and
[6] took out an installation progress report dated
[7] February 23, 1995 and turned to the second page
[8] and looked at the first line and then picked up
[9] another report dated February 24, 1995 and went
[10] to what might be the 12th page to the 12th line
[11] and compared those two lines in different
[12] documents prepared at different times to
[13] internal pages within them and lines within
[14] them, yes, they could have reached the
[15] conclusion that there might be some problem or
[16] reconciliation required between those two
[17] things.
[18] But it's a reach, all right, it's a
[19] lot of - if someone had the documents, took
[20] them out of the file, turned to that page and
[21] looked at those two lines, it's a pretty
[22] strained hypothetical. That's why I'm having
[23] trouble answering it. So if you create if, if,
[24] and yes and but if and all that, I guess the
[25] answer would be yes, but I think it's a very

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(1) *Price*
(2) strained hypothetical.
(3) That's my opinion. I'm not speaking
(4) for who may have had those documents and done
(5) that exercise.
(6) **Q:** Do you understand Exhibit 17 to tell
(7) you, to be a report to Liberty that, among other
(8) things, Liberty has only a pending application
(9) and no license for 433 East 56th Street?
(10) **MR. SPITZER:** Does he understand
(11) that today?
(12) **MR. BECKNER:** Yes, today.
(13) **A:** I understand it from reading the
(14) document today that that's the import of the
(15) document.
(16) **Q:** So in a shorthand way, Lehmkuhl's
(17) document says you don't have a license to serve
(18) 433 East 56th as of February 24th, right?
(19) **A:** It says it's pending, yes.
(20) **Q:** As opposed to granted?
(21) **A:** That's correct.
(22) **Q:** Can you tell me, looking at the
(23) progress report, does the progress report, as
(24) you sit here today, tell you whether or not you
(25) are serving 433 East 56th Street as of the date

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(1) *Price*
(2) of the report?
(3) **A:** No, it doesn't specifically tell us
(4) that.
(5) **Q:** Turn the page, if you would, please,
(6) to page 3. The top address there, 1001 Fifth
(7) Avenue. Does this report tell you whether or
(8) not you are serving 1001 Fifth Avenue, for
(9) example?
(10) **A:** Let me just relate back to the word
(11) "complete." The installation people, the
(12) operations people, use the word "complete" in
(13) different ways. Sometimes it means construction
(14) on a rooftop, sometimes it means wiring to an
(15) apartment, sometimes it means turning on a
(16) subscriber.
(17) In this particular case, in that
(18) particular line, it could mean any one of those
(19) things. If it was a building that was turned on
(20) a year before the report, I would presume that
(21) subscribers are being served. If it was a
(22) building, you know, that had just been installed
(23) in some reasonable period, it may or may not
(24) mean that. But that's what that meeting is
(25) about, to reconcile the installation progress

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(1) *Price*
(2) and where it is. That's why we all sat in that
(3) room to try to reconcile marketing and
(4) operations.
(5) **MR. BECKNER:** Could you read the
(6) question back, please.
(7) (The record was read.)
(8) **Q:** Can you tell me just yes or no to
(9) that question, sir?
(10) **A:** No, I said I can't.
(11) **Q:** Okay.
(12) **A:** If I could definitively, I
(13) absolutely would definitively. I don't want to
(14) misspeak under oath. If you asked me might it
(15) indicate that, I would say yes. Did it indicate
(16) that? I can't say for certain it did in that
(17) particular building on that particular date.
(18) **Q:** Let's go back to page 5 of this same
(19) progress report, which has the year 1993 at the
(20) top. And let's just again pick the top address,
(21) 160 West End Avenue. Again, all I want to know
(22) is can you tell from this report whether or not
(23) you're, as of the date of the report, serving
(24) 160 West End Avenue?
(25) **A:** Yes, I can.

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(1) *Price*
(2) **Q:** How can you tell that?
(3) **A:** Because I was in the lobby signing
(4) people up in that particular building.
(5) **MR. SPITZER:** Can you tell from this
(6) report?
(7) **A:** No. But I know the address so I
(8) know I was there signing up subscribers. And as
(9) a matter of fact, I think we had an instant
(10) install crew that night I was there that would
(11) actually go up to their apartment and hook them
(12) up. In that case, I can say definitely, there
(13) were subscribers activated in that building on
(14) that date because I was part of the process and
(15) was hands on with it and knew it.
(16) **Q:** But your answer to the question is
(17) based on your personal involvement in the
(18) process and not based on the report, correct?
(19) **A:** That's correct.
(20) **Q:** Is there any document that Liberty
(21) regularly generated which would definitively
(22) establish whether or not Liberty was providing
(23) service to a particular address on a particular
(24) date?
(25) **A:** Not that I know of.

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[1] *Price*
[2] Q: I take it this document is?
[3] A: That would be a detailed operations
[4] report. They may have a report that says we
[5] activated a particular department on a
[6] particular day. As a matter of fact, customer
[7] service and billing would probably have such a
[8] record, but I wouldn't have seen that kind of
[9] detail. But that, I think, would answer your
[10] question. This is not meant for that purpose,
[11] at least for me; maybe operations had uses for
[12] this that would be in that zone, but this was
[13] meant to give management a general sense of
[14] where things were going.
[15] Q: You mentioned in an answer in
[16] relation to 160 West End Avenue that you
[17] personally participated in the launching at that
[18] address?
[19] A: That's correct.
[20] Q: Did you personally participate in
[21] the launch of Liberty service at any addresses
[22] during the year 1994?
[23] A: You'd have to ask me a particular
[24] address. My memory is not that good.
[25] Q: I'll do that. 239 East 79th Street?

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[1] *Price*
[2] A: Not that I recall, no.
[3] Q: 525 East 86th?
[4] A: No.
[5] Q: 170 West End Avenue?
[6] A: No. Just 160.
[7] Q: 425 East 58th Street?
[8] A: No.
[9] Q: 220 East 52nd?
[10] A: No.
[11] Q: 120 East End Avenue?
[12] A: No.
[13] Q: 55 Central Park West?
[14] A: No.
[15] Q: The Bel Air Condominium, 524 East
[16] 72nd?
[17] A: No.
[18] Q: The Brittany?
[19] A: No.
[20] Q: 114 East 72nd?
[21] A: No.
[22] Q: 55 West End Avenue?
[23] A: No.
[24] Q: Is there also a 35 West End Avenue
[25] that's distinct from 55?

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[1] *Price*
[2] A: I don't think so. I think 35 was
[3] the construction address and 55 was the legal
[4] address after they opened. I believe there was
[5] a discrepancy there between our reports when the
[6] address changed after they opened.
[7] Q: Waterside Plaza?
[8] A: I don't recall. I may have been at
[9] Waterside but I don't think it was when people
[10] were being activated. I think it was a town
[11] meeting to talk about Liberty.
[12] Q: 25 West 54th?
[13] A: No.
[14] Q: 639 West End Avenue?
[15] A: No.
[16] Q: The General Motors building?
[17] A: I was there on several occasions,
[18] but not during the time people were being
[19] activated. It was preliminary roof work, it was
[20] a big job for us so I tromped around there quite
[21] a bit, but not at the activation point.
[22] Q: 16 West 16th Street?
[23] A: No.
[24] MR. BECKNER: Off the record.
[25] (Discussion off the record.)

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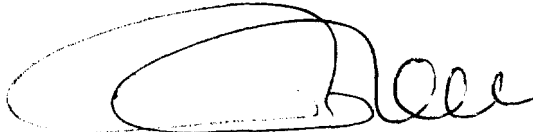
[1] *Price*
[2] (Time noted: 12 o'clock.)
[3]
[4]
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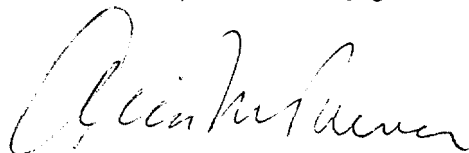
Price

(1)
(2)
(3) I, the witness herein, having read the foregoing
(4) testimony, do hereby certify it to be a true and
(5) correct transcript, subject to the corrections,
(6) if any, shown on the attached page.
(7)
(8)
(9)
(10)



PETER PRICE

(11)
(12)
(13) Subscribed and sworn to
(14) before me this day 27 AUGUST
(15) of 1996.
(16)
(17)
(18)
(19)
(20)
(21)
(22)
(23)
(24)
(25)



ALICE TURNER
Notary Public, State of New York
No. 31-4989566
Qualified in New York County
Commission Expires Dec. 9, 1997

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Price
CERTIFICATE

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

(5)
(6)
(7) I, JANE M. TELLER, a Shorthand
(8) Reporter and Notary Public within and for the
(9) State of New York, do hereby certify:
(10) That PETER PRICE, the witness whose
(11) continued deposition is hereinbefore set forth,
(12) was previously duly sworn by a Notary Public and
(13) that such deposition is a true record of the
(14) testimony given by such witness.
(15) I further certify that I am not
(16) related to any of the parties to this action by
(17) blood or marriage and that I am in no way
(18) interested in the outcome of this matter.
(19) In witness whereof, I have hereunto
(20) set my hand this day of 1996.
(21)
(22)
(23)
(24)
(25)

JANE M. TELLER

Price
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(12)

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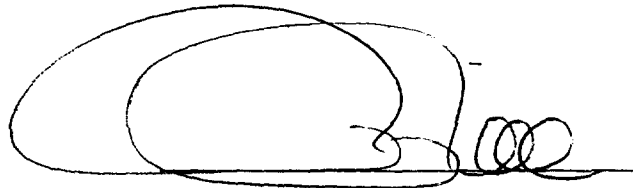
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Lawyer's Notes

CERTIFICATE OF DEPONENT

I have read the foregoing 217 pages which contain
the correct transcript of the answers made by me to the
questions therein recorded.

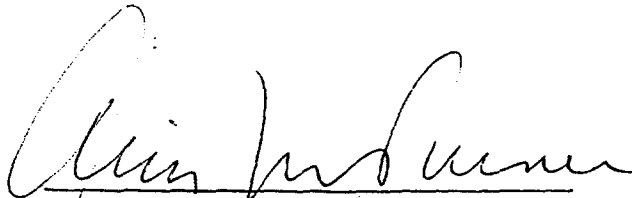


Peter Price

* * *

Subscribed and sworn before me this .

27 day of AUGUST, 19 96.



Notary Public in and for .

ALICE TURNER
Notary Public, State of New York
No. 31-4989566

Qualified in New York County
Commission Expires Dec. 9, 97

My commission expires _____.

)

To the deposition of Peter O. Price

The deponent having a right to make any changes deemed necessary, hereby makes the following changes into the deposition and states the reason for each change accordingly.

[illegible]

Federal Communications Commission

Docket No. 96-41 Exhibit No. 12

Presented by Liberty/Bureau

Identified ☒

Disposition

Received ☒

Rejected ☐

Reporter

Date

S
1-10-97

In The Matter Of:

*In re Applications of
Liberty Cable Co., Inc.*

Peter Price

Vol. 3, August 2, 1996

Greenhouse Reporting, Inc.

Computerized Litigation Support

363 Seventh Avenue

20th Floor

New York, NY 10001

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[1]
[2]
[3] FEDERAL COMMUNICATIONS COMMISSION
[4]
[5] In re Applications of
[6] LIBERTY CABLE CO., INC.
[7] For Private Operational Fixed Microwave
Service Authorizations and Modifications.
[8]
[9] August 2, 1996
[10] 9:45 a.m.
[11]
[12]
[13] Continued Deposition of PETER PRICE,
[14] taken by Time Warner Cable of New York City,
[15] pursuant to Notice, at the offices of
[16] Constantine & Partners, 909 Third Avenue, New
[17] York, New York, before Jane M. Teller, a
[18] Shorthand Reporter and Notary Public within and
[19] for the State of New York.
[20]
[21] GREENHOUSE REPORTING, INC.
[22] 363 Seventh Avenue - 20th Floor
New York, New York 10001
[23] (212) 279-5108
[24]
[25]

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[1] **Price**
[2] PETER PRICE, having been previously duly sworn
[3] by a Notary Public, was examined and testified
[4] further as follows:
[5] EXAMINATION (Continued)
[6] **BY MR. BECKNER:**
[7] **Q:** Mr. Price, yesterday I was asking
[8] you a few questions about Exhibit 21 and 22 to
[9] your deposition here, which were copies of
[10] installation progress reports. And there's one
[11] further thing that I'd like you to clarify for
[12] me if you could. In reviewing the transcript of
[13] your prior deposition, I think you testified
[14] that one of the uses that was made of these
[15] progress reports generically was, I think to use
[16] your term, coordinate licensing. Do you
[17] remember testifying to that effect? Because if
[18] you don't, I can show you the testimony.
[19] **A:** You have to show it to me because I
[20] don't know exactly the context of it.
[21] **Q:** I'm going to ask you to take a look
[22] at page 66 of the transcript of your May 28th
[23] deposition, and just to clarify for you, I don't
[24] know if you've seen the transcript in this
[25] format here. This is sort of a compressed

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- [1]
[2] format that has six pages on one page.
[3] A: I have seen it.
[4] Q: So what I'd like you to look at is
[5] just the top left corner, which is a
[6] reproduction of page 66 of the official
[7] transcript.
[8] A: Yes, I see it.
[9] Q: What I simply want to know is, by
[10] way of clarification, in light of Exhibit 17 and
[11] these other documents which we recently have
[12] been given, when you were testifying about the
[13] use of these progress reports to coordinate
[14] licensing, was that intended by you to mean that
[15] they were used in order to know what licenses
[16] had to be applied for? For example, if a
[17] building appeared in a future installation
[18] column, somebody would know to call the lawyers
[19] or Comsearch and get a license application
[20] started?
[21] A: That's a good example. It was
[22] mainly for the purpose for operations to hear
[23] from marketing what new buildings they were
[24] talking to so that they would have some prior
[25] notice of what was coming down the pike.

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- [1]
[2] Q: And just to close this up, I take it
[3] that as far as you know, the installation
[4] progress reports were not used during the
[5] relevant time period we're talking about, which
[6] is 1994, first quarter of 1995, they were not
[7] used to verify or confirm that a license or
[8] other authority had been obtained for microwave
[9] service to a particular address?
[10] A: Not to my knowledge. That certainly
[11] wasn't the purpose of the meeting or the
[12] report. Maybe some people would have used them
[13] for that purpose, but that was not the intent.
[14] Q: And also I believe at some point
[15] later in 1995, the format of the progress report
[16] was changed to include a column that had
[17] information about the status of the license?
[18] A: That's correct.
[19] Q: But that was done later in the year?
[20] A: That's correct.
[21] Q: Now, in your testimony yesterday,
[22] and indeed I think in May, you seemed to
[23] indicate that Mr. Nourain was the one who was
[24] responsible for contacting the law firm of Peter
[25] & Corazzini for the purpose of having them

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- [1]
[2] prepare a new license application when one was
[3] necessary, and also contacting Comsearch.
[4] A: Well, he was part of the process.
[5] He wasn't, to my mind, exclusively the person
[6] that - Bruce McKinnon at one point was involved
[7] in that process and I believe there were others
[8] involved in dealing with the law firm, but
[9] Behrooz was certainly a principal in that
[10] process.
[11] Q: And let's just leave Mr. McKinnon
[12] out of it. Let's just talk about the time
[13] period of, say, from June of '94 through April
[14] of '95, which would have been after Mr. McKinnon
[15] had left the company; is that right?
[16] A: That's correct.
[17] Q: Was the relationship between Peter &
[18] Corazzini and Liberty Cable during that period
[19] that I've specified such that Peter & Corazzini
[20] had to be authorized or asked by someone at
[21] Liberty to do something before they did it?
[22] MR. SPITZER: I'm going to object.
[23] It's a little ambiguous to me what you
[24] mean. At a law firm they don't initiate
[25] actions, no lawyer can act without the

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Price

- [1]
[2] authorization of his clients, so I'm not
[3] quite sure what the question is meant to
[4] elicit.
[5] MR. BECKNER: I'm not sure that I
[6] would agree with that statement that no
[7] lawyer can act with respect to outsiders,
[8] but as we all know we can certainly
[9] generate billing internally.
[10] MR. SPITZER: Billing is different.
[11] MR. BECKNER: Reserving this or that
[12] or whatever. And -
[13] MR. SPITZER: Could you rephrase the
[14] question?
[15] MR. BECKNER: Sure.
[16] MR. SPITZER: Because I think it's
[17] ambiguous.
[18] Q: We've established that Mr. Nourain
[19] on occasion would call the lawyers at Peter &
[20] Corazzini and ask them to prepare a license
[21] application, for example, correct?
[22] A: Yes.
[23] Q: And I take it as far as you were
[24] concerned, a call or other communication from
[25] Mr. Nourain to Peter & Corazzini was all the

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- [1]
[2] authorization they needed from Liberty to do the
[3] work, they didn't need to have an authorization
[4] from somebody else as well as Mr. Nourain?
[5] **A:** The procedure I put into place
[6] required for operations to coordinate with
[7] Washington counsel to move forward licenses.
[8] Whether Behrooz Nourain calling someone at Peter
[9] & Corazzini was what triggered that or whether
[10] there was a protocol in place to do certain
[11] things at - certain things according to the
[12] procedure I had set up, I don't know precisely
[13] who authorized whom, but I knew there was a
[14] process in place, and I presume there was a
[15] protocol in place as to how those things were
[16] done.
[17] **Q:** And certainly it was not necessary
[18] for someone at Peter & Corazzini to call you
[19] back, for example, and say something like,
[20] Behrooz Nourain has called us and asked us to
[21] prepare an application to a paths for such and
[22] such an address, is that okay, that was not
[23] something that had to happen?
[24] **A:** No, that's correct.
[25] **Q:** With respect to these reports that

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- [1]
[2] we've looked at yesterday that are marked as
[3] Exhibits 17, 18 and 19 and 20 to your
[4] deposition -
[5] **MR. SPITZER:** The inventories?
[6] **MR. BECKNER:** I'm sorry, the
[7] inventories, yes.
[8] **Q:** - based on what you know of the
[9] relationship between Peter & Corazzini and
[10] Liberty Cable, would someone have to have
[11] requested of Peter & Corazzini that they prepare
[12] such a report or could Peter & Corazzini simply
[13] just do it on their own?
[14] **A:** I have no idea. I was not part of
[15] that process and I wasn't aware, as I said
[16] before, who asked whom for what and what exactly
[17] the protocol set up to accomplish the procedure
[18] was.
[19] **Q:** Now, I think you testified in your
[20] earlier deposition that you at least looked at
[21] the bills that came in for Peter & Corazzini; is
[22] that right?
[23] **A:** They passed through my office on the
[24] way for authorization to be paid. I didn't go
[25] through them page by page.

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- [1]
[2] **Q:** I recall you saying that you do not
[3] read all of it. Did you have the power to
[4] authorize that they be paid or did someone else
[5] have to do that?
[6] **A:** Someone else had to do that. I had
[7] the power to say that they had arrived and that
[8] they looked like it was the proper form and
[9] someone else would analyze it to make sure it
[10] was the proper amount and authorize a check.
[11] **Q:** Who would do that analysis?
[12] **A:** I believe it was the accounts
[13] payable department that would do that analysis,
[14] and they would present it to the person signing
[15] the checks.
[16] **Q:** Who had check signing authority?
[17] **A:** Usually, Edward Milstein or Howard
[18] Milstein; on occasion it would be the chief
[19] financial officer if neither of them were
[20] present.
[21] **Q:** So if there were any questions about
[22] the bill, those questions would likely have come
[23] from the person who was asked to sign the check
[24] paying the bill?
[25] **A:** That's right, unless it related to

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- [1]
[2] something that I was specifically involved in
[3] that was a question of that I had direct
[4] knowledge about.
[5] **MR. SPRITZER:** Mr. Beckner, we're
[6] trying to give you full latitude but I
[7] think we're getting a bit afield from the
[8] memorandum, the February 24 inventory,
[9] which is the focus of the deposition.
[10] But, again, if you can relate it back,
[11] that's great.
[12] **MR. BECKNER:** I'm glad to relate it
[13] back for you. I'm trying to find out how
[14] this thing happened. You know, typically,
[15] as you know, and as I know, clients don't
[16] pay for things that we volunteer; they pay
[17] for what they've asked for. And so that's
[18] the basis for my exploration of this
[19] particular relationship.
[20] **Q:** With respect to the format of the
[21] Peter & Corazzini bill for 1994 and '95, did
[22] they send a bill to you monthly, was that -
[23] **A:** I believe it was monthly, I never
[24] clocked the frequency of it.
[25] **Q:** But it was certainly not just once a